

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
Frank Chervan, Inc.**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Frank Chervan, Inc., for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “Frank Chervan, Inc.” means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the structure at Dawn Drive located in Bedford, Virginia.

8. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. “O&M” means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Frank Chervan, Inc. owns and operates a facility in Bedford, Virginia. This facility is subject to Stationary Source permits dated April 1, 1988 and September 8, 1983.
2. DEQ staff has noted apparent violations of the Air Pollution Control Law and Regulations at the Facility. They are as follows:
 - A. Failure to comply with 9 VAC 5-40-80 of the State Air Pollution Control Board, which states that no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any visible emissions which exhibit greater than 20% opacity, except for one six-minute period in any one hour of not more than 60% opacity.
 - B. The apparent violation was noted in a Notice of Violation issued by DEQ to Frank Chervan, Inc. on April 12, 2002, and based on the following observations:

On April 10, 2002, staff observed excess visible emissions from the boiler stack. Staff conducted a visible emission evaluation per Reference Method 9. The results of the visible emission evaluation (attached) found the source to be exceeding the 20% opacity limit specified in 9 VAC 5-40-80 for three six-minute periods. The average opacity for the three consecutive six-minute periods were 50%, 44%, and 39% respectively.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1307.D, 10.1-1184 and §10.1-1316.C, orders Frank Chervan, Inc., and Frank Chervan, Inc. agrees, to perform the actions described in Appendix A of this Order.

In addition, the Board orders Frank Chervan, Inc., and Frank Chervan, Inc. voluntarily agrees, to pay a civil charge of **\$1,155** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Frank Chervan, Inc., for good cause shown by Frank Chervan, Inc., or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Frank Chervan, Inc. by DEQ on **April 12, 2002**. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Frank Chervan, Inc. admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. Frank Chervan, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Frank Chervan, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Frank Chervan, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Frank Chervan, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Frank Chervan, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Frank Chervan, Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Frank Chervan, Inc. Notwithstanding the foregoing, Frank Chervan, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Frank Chervan, Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Frank Chervan, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Frank Chervan, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Frank Chervan, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by _____, who is
(name)

_____ of Frank Chervan, Inc., on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Frank Chervan, Inc. shall:

1. Within **30 days** from the effective date of the Order, submit to the DEQ accurate, up to date documentation demonstrating that all employees associated with the Wood-Fired Boiler System have been trained in Operation and Maintenance procedures.
2. Within **30 days** from the effective date of the Order, submit to the DEQ a plan and schedule for boiler grate replacement. Installation not to exceed **6 months** from the effective date of the Order.
3. Within **30 days** from the installation of the boiler grate replacement, submit to the DEQ, the Testing Protocol for an EPA Method 5 (Particulate Matter) Stack Emissions Test to demonstrate compliance with applicable regulations.
4. Within **60 days** from the installation of the boiler grate replacement, perform an EPA Method 5 (Particulate Matter) Stack Emissions Test to demonstrate compliance with applicable regulations.
5. Within **90 days** from the completion of the EPA Method 5 (Particulate Matter) Stack Emissions Test, submit to the DEQ, the Stack Emissions Test results for compliance review.
6. Within **90 days** from the effective date of the Order, submit to the DEQ accurate documentation that a preventative maintenance plan has been implemented to establish good operating practices for the boiler systems.
7. Within **6 months** from the effective date of the Order, submit to the DEQ documentation stating that a certified Visual Emission Evaluator is on staff and is maintained on staff for the duration of the equipment usage to meet the requirements for EPA Method 9.